

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

No. 09-13809

Plaintiff,
v.

District Judge Sean F. Cox
Magistrate Judge R. Steven Whalen

FRANK J. BLUESTEIN,

Defendant.

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ORDER

Before the Court is Defendant Frank J. Bluestein's ("Defendant's") October 10, 2010 Motion to Stay Proceedings as a result of an August 11, 2010 Involuntary Bankruptcy Petition [Docket #24]. For the reasons set forth below, the motion is DENIED.

I. BACKGROUND FACTS

Plaintiff United States Securities and Exchange Commission ("SEC") filed suit in this Court on September 28, 2009 under the Securities Act 15 U.S.C. § 77t(b) and the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e) alleging Defendant's involvement in a \$250 million Ponzi scheme. *Complaint* at ¶1. Plaintiff requests a permanent injunction against Defendant, a securities broker, from continuing the alleged activities, as well as the disgorgement of "ill-gotten gains," and civil penalties. *Id.* at pg. 17.

II. THE PRESENT MOTION

Defendant asks for a stay of proceedings pursuant to 11 U.S.C. § 362(a)(1), which states that the filing of a bankruptcy petition generally "operates as a stay, applicable to all entities," including

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under

this title, or to recover a claim against the debtor that arose before the commencement of the case under this title[.]

Notwithstanding Defendant's citation to the general rule, the present action by the SEC is exempt from the automatic stay provision, which creates an exception for the following:

the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power[.]

§ 362(b)(4). An action seeking “to enforce the police and regulatory authority of a governmental unit, represents one of the exceptions to this ‘stay’ mandate.” *U.S. ex rel. Lazar v. Worldwide Financial Services, Inc.*, 2007 WL 4180718, *1 (E.D.Mich. 2007); 11 U.S.C. § 362(b)(4). “In passing this legislation, Congress expressed its intention to permit the continuation of actions and proceedings by governmental units which are designed to redress fraud.” *Lazar*, at *1 (citing H.R.Rep. No. 95-595, at 728 (1977)).

Moreover, the fact that Defendant's petition is “involuntary” does not prevent the SEC from asserting that it is exempted from the stay under § 362(b)(4). *See U.S. S.E.C. v. Applegate*, 2006 WL 1005302, *1 (N.D. Ohio 2006)(citing *Securities and Exchange Commission v. First Financial Group of Texas*, 645 F.2d 429, 438 (5th Cir.1981); *Bilzerian v. Securities and Exchange Commission*, 146 B.R. 871, 872-73 (Bankr.M.D.Fla.1992)). Likewise, while the District Court cannot *enforce* a disgorgement order while the bankruptcy petition is pending, *see In re Bilzerian*, 146 B.R. 871, 872-873 (Bankr. M.D. Fla.1992), the fact that Plaintiff seeks disgorgement of Defendant's allegedly ill-gotten gains does not bar the present case from proceeding.¹ *Applegate* at *1.

¹ In fact, Plaintiff, arguing that this action is exempted from the stay, concedes that the Court cannot enforce an order of disgorgement. “[T]he exception to the automatic stay permits

Defendant's Motion for Stay is DENIED.

SO ORDERED.

s/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Date: September 12, 2011

CERTIFICATE OF SERVICE

I hereby certify on September 12, 2011 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on September 12, 2011: **None.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge R. Steven Whalen
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the Commission to pursue this action to the point of the enforcement of a money judgment.”
Plaintiff's Response at 4.